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SANITARY LEGISLATION.

COURT DECISIONS.

UNITED STATES SUPREME COURT.

Harrison Antinarcotic Law—Section 8 Does not Prohibit Possession of Habit-Forming Drugs by a Person Who is not Required to Register.

UNITED STATES *v.* JIN FUEY MOY. (June 5, 1916.)

The Harrison antinarcotic law is a revenue measure, and while it may be assumed that the statute has a moral end as well as revenue in view, the statute must be construed as a revenue measure.

The words "any person not registered" as used in section 8 of the Harrison antinarcotic law can not be taken to mean any person in the United States, but must be taken to refer to the class with which the statute undertakes to deal—the persons who are required to register by section 1.

Possession of habit-forming drugs by persons who do not produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away such drugs is not made unlawful by the Harrison antinarcotic law.

Mr. Justice HOLMES delivered the opinion of the court.

This is an indictment under section 8 of the act of December 17, 1914 (c. 1; 38 Stat., 785, 789) [PUBLIC HEALTH REPORTS Feb. 19, 1915, p. 573]. It was quashed by the district court on the ground that the statute did not apply to the case. (225 Fed. Rep., 1003) [PUBLIC HEALTH REPORTS Jan. 21, 1916, p. 143].

The indictment charges a conspiracy with Willie Martin to have in Martin's possession opium and salts thereof, to wit, 1 dram of morphine sulphate. It alleges that Martin was not registered with the collector of internal revenue of the district, and had not paid the special tax required; that the defendant for the purpose of executing the conspiracy issued to Martin a written prescription for the morphine sulphate, and that he did not issue it in good faith, but knew that the drug was not given for medicinal purposes, but for the purpose of supplying one addicted to the use of opium. The question is whether the possession conspired for is within the prohibitions of the act.

The act is entitled "An act to provide for the registration of, with collectors of internal revenue, and to impose a special tax upon, all persons who produce, import, manufacture, compound, deal in, dispense, sell, distribute, or give away opium or coca leaves, their salts, derivatives, or preparations, and for other purposes." By section 1 the persons mentioned in the title are required to register, and to pay a special tax at the rate of \$1 per annum, with certain exceptions, and it is made unlawful for the persons required to register to produce, etc., the drugs without having registered and paid the special tax. All provisions of law relating to special taxes are extended to this tax. By section 2 it is declared unlawful for any person to sell or give away the drugs mentioned without a written order, provided for, excepting deliveries by physicians, etc., or on their order, and certain other cases. Then after provision for returns it is made unlawful by section 4 for any person who shall not have registered and paid the special tax to send, carry, or deliver the drugs in such commerce as

Congress controls, again with exceptions. By section 6 preparations containing certain small proportions of the drugs are excluded from the operation of the act, under conditions. By section 7 internal-revenue tax laws are made applicable, and then comes section 8 under which the indictment is framed.

By section 8 it is declared unlawful for "any person" who is not registered and has not paid the special tax to have in his possession or control any of the said drugs, and "such possession or control" is made presumptive evidence of a violation of this section and of section 1. There is a proviso that the section shall not apply to any employee of a registered person and certain others, with qualifications, or to the possession of any of the drugs which have been prescribed in good faith by a physician registered under the act, and to the possession of some others. And, finally, it is provided that the exemptions need not be negatived in any indictment, etc., and that the burden of proving them shall be upon the defendant. The district judge considered that the act was a revenue act and that the general words "any person" must be confined to the class of persons with whom the act previously had been purporting to deal. The Government, on the other hand, contends that this act was passed with two others in order to carry out the International Opium Convention (38 Stat., pt. 2, 1929); that Congress gave it the appearance of a taxing measure in order to give it a coating of constitutionality, but that it really was a police measure that strained all the powers of the legislature, and that section 8 means all that it says, taking its words in their plain literal sense.

A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score. *United States v. Delaware & Hudson Co.* (213 U. S., 366, 408). If we could know judicially that no opium is produced in the United States, the difficulties in this case would be less; but we hardly are warranted in that assumption when the act itself purports to deal with those who produce it (sec. 1). Congress, at all events, contemplated production in the United States, and therefore the act must be construed on the hypothesis that it takes place. If opium is produced in any of the States, obviously the gravest question of power would be raised by an attempt of Congress to make possession of such opium a crime. *United States v. De Witt* (9 Wall., 41). The Government invokes Article VI of the Constitution, that treaties made under the authority of the United States shall be the supreme law of the land; but the question arises under a statute, not under a treaty. The statute does not purport to be in execution of a treaty, but calls itself a registration and taxing act. The provision before us was not required by the opium convention; and whether this section is entitled to the supremacy claimed by the Government for treaties is, to say the least, another grave question, and, if it is reasonably possible, the act should be read so as to avoid both.

The foregoing consideration gains some additional force from the penalty imposed by section 9 upon any person who violates any of the requirements of the act. It is a fine of not more than \$2,000 or imprisonment for not more than five years, or both, in the discretion of the court. Only words from which there is no escape could warrant the conclusion that Congress meant to strain its powers almost, if not quite, to the breaking point in order to make the probably very large proportion of citizens who have some preparation of opium in their possession criminal, or at least *prima facie* criminal, and subject to the serious punishment made possible by section 9. It may be assumed that the statute has a moral end as well as revenue in view; but we are of opinion that the district court in treating those ends as to be reached only through a revenue measure and within the limits of a revenue measure was right.

Approaching the issue from this point of view, we conclude that "any person not registered," in section 8, can not be taken to mean any person in the United States, but must be taken to refer to the class with which the statute undertakes to deal—the persons who are required to register by section 1. It is true that the exemption of possession of drugs prescribed in good faith by a physician is a powerful argument;

taken by itself, for a broader meaning. But every question of construction is unique, and an argument that would prevail in one case may be inadequate in another. This exemption stands alongside of one that saves employees of registered persons, as do sections 1 and 4, and nurses under the supervision of a physician, etc., as does section 4, and is so far vague that it may have had in mind other persons carrying out a doctor's orders rather than the patients. The general purpose seems to be to apply to possession exemptions similar to those applied to registration. Even if for a moment the scope and intent of the act were lost sight of, the proviso is not enough to overcome the dominant considerations that prevail in our mind.

Judgment affirmed.

Mr. Justice HUGHES and Mr. Justice PITNEY dissent.

NEW YORK SUPREME COURT, APPELLATE DIVISION, THIRD DEPARTMENT.

Habit-Forming Drugs—Sale to Minor—Damages Awarded.

TIDD v. SKINNER et al. (Jan. 5, 1916.)

Defendants sold heroin in considerable quantities to a boy about 18 years of age, who became a drug addict. The mother of the boy (a widow) brought suit for damages against the defendants. The jury awarded \$2,000 compensatory damages and \$1,000 punitive damages. The court held that this verdict was supported by the evidence and the judgment was affirmed.

[156 N. Y. Supp., 885.]

HOWARD, J.: A mother brings this action against a firm of druggists for having sold to her minor son a certain poisonous drug known as heroin. She alleges that as a result of these sales her son became an habitual user of heroin and thereby became a physical and moral wreck, unable to perform any labor, and that his health was ruined and his mind destroyed, whereby she was deprived of his services and has been greatly damaged. The plaintiff's husband, the father of the minor, was dead at the time of the acts complained of. The facts were submitted to a jury, and a verdict has been returned in favor of the plaintiff for \$2,000 compensatory damages and \$1,000 punitive damages.

Our examination of the record convinces us that the numerous sales of this drug to the plaintiff's son, continuing over a long period of time, have been established by overwhelming evidence. We say overwhelming, notwithstanding the fact that the three principal witnesses for the plaintiff were each drug fiends and were each criminals. Being thus fixed in our opinion that the jury was well warranted in finding that the sales had been made, at the times and in the quantities complained of, we have no disposition whatever to disturb the verdict as being against the weight of evidence.

And we believe that the evidence shows that the plaintiff was, in fact, actually damaged. The proof shows that previous to his acquisition of the drug habit the young man earned considerable money. He was something over 18 years of age. The evidence as to his earning capacity was explicit, and much of it came from the mouth of a disinterested witness. The lad was employed at Schenectady by the General Electric Co., and an official in charge of the books was produced and the exact amount of his earnings was shown. It appears from these books that his wages ranged from \$40 to \$50 a month. He also earned money as a singer, sometimes \$15 per week. He was also useful to his mother about the house, doing chores and doing errands and making himself useful in other ways, as dutiful boys of that age usually do. The compensatory damages fixed by the jury can not, therefore, be said to be an exaggerated estimate.

The action is said to be a novel one. In some respects this is true, although the principle on which the cause of action is based is not novel, but has been known and recognized by the courts for centuries. By whatever name this action may go the